

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
McCORMICK & CO., INC.,

Plaintiff,

Case No.: 07-CV-7244 (SCR)

-against-

AFFIDAVIT OF GREGG D.  
MINKIN IN SUPPORT OF  
MOTION TO DISMISS

KARI-OUT CLUB, LLC, t/a KARI-OUT CO.,

Defendant .

-----X  
PERK UP, INC., s/h/a KARI-OUT CLUB, LLC,  
t/a KARI-OUT CO.,

Third Party Plaintiff,

-against-

SHAMBAUGH & SON, LP,

Third Party Defendant.

-----X  
STATE OF NEW YORK     )  
                                  ) ss:  
COUNTY OF NEW YORK )

GREGG D. MINKIN, being duly sworn, deposes and says:

1. I am a member with the firm LONDON FISCHER LLP, attorneys for Third-Party Defendant SHAMBAUGH & SON, L.P. ("SHAMBAUGH"), and I am fully familiar with the facts set forth in this Affidavit.

2. I submit this Affidavit in support of SHAMBAUGH's motion for an Order:

a. directing that Indiana law apply to this action;

- b. dismissing each and every claim asserted in the Third-Party Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted;
- c. staying discovery pending the Court's decision on this motion; and
- d. granting SHAMBAUGH its costs, including attorney's fees, together with such other and further relief as to the Court may seem just and proper.

3. This Affidavit is based on my review of files maintained by SHAMBAUGH relating to this matter and the pleadings filed in this action.

4. Annexed hereto as Exhibit "A" is a true and accurate copy of Plaintiff's Summons and Complaint filed with the Court on or about August 14, 2007.

5. Annexed hereto as Exhibit "B" is a true and accurate copy of Defendant/Third-Party Plaintiff's Summons and Complaint filed with the Court on or about November 26, 2007.

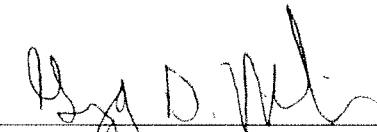
6. Annexed hereto as Exhibit "C" is a true and accurate copy of the Affidavit of Jeff Johns, Vice President of SHAMBAUGH, sworn to on the \_\_\_ day of January, 2008 (hereinafter referred to as the "Johns Affidavit").

7. Annexed hereto as Exhibit "D" is a true and accurate copy of the Stipulation and Order extending Third-Party Defendant's time to Answer to January 28, 2008.

8. Annexed hereto as Exhibit "E" is a true and accurate copy of the Verified Answer to the Verified Complaint by PERK-UP, INC. s/h/a KARI-OUT CLUB LLC, t/a KARI-OUT CLUB.

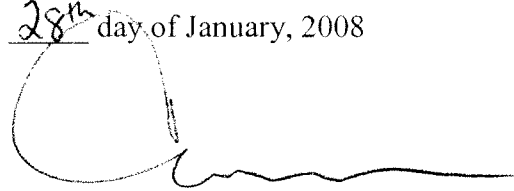
9. Annexed hereto as Exhibit "F" is a true and accurate copy of the contract between McCORMICK and SHAMBAUGH referenced in the Complaint at ¶ 8 and the Third-Party Complaint at ¶¶ 12, 23-33.

WHEREFORE, it is respectfully requested that the instant motion be granted in its entirety, together with such other, further and different relief as the Court deems just and proper.

  
\_\_\_\_\_  
GREGG D. MINKIN (GM 2356)

Sworn to before me this

28<sup>th</sup> day of January, 2008



\_\_\_\_\_  
Notary Public

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**CASSANDRA SHANLEY** (castelli)  
**Notary Public, State of New York**  
**No. 01SH6124795**  
**Qualified in Richmond County**  
**Commission Expires April 4, 2009**